

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

**FILED**  
U.S. DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

AUG 15 2003

DANILO A. DE LA CRUZ,

Petitioner,

*K. Shuttlesworth*  
CLERK

v.

No. CIV-03-0763 JP/DJS

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

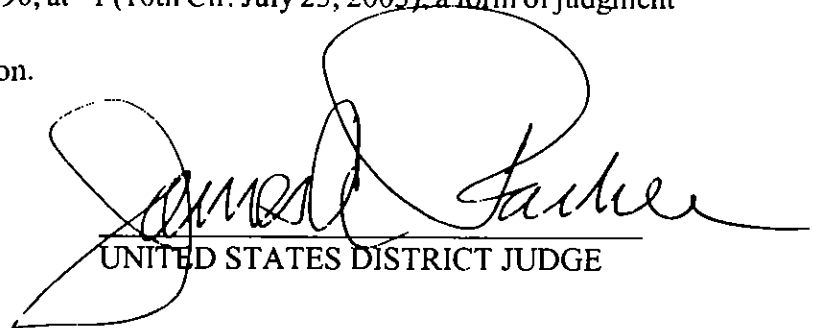
This matter is before the Court *sua sponte* to review Petitioner's "petition to vacate sentence pursuant to 28 U.S.C. § 2241." The petition does not identify the district where Petitioner was convicted and sentenced, and his name does not appear on the criminal docket of this Court. He alleges that, because he is a deportable alien, the Federal Bureau of Prisons considers him ineligible for a pre-release custody program. Petitioner argues that his ineligibility for the program is a mitigating factor for which he was entitled to a downward departure. He claims his attorney provided ineffective assistance at sentencing by failing to argue for the departure, and he asks that his sentence be vacated and reduced accordingly.

Because Petitioner was not convicted or sentenced by this Court, his claim may not be adjudicated here. "It is well established that § 2255 is the 'exclusive remedy for testing the validity of a judgment and sentence, unless it is inadequate or ineffective' and that such an action must be brought in the district court which imposed the sentence. A petition under § 2241, on the other hand, 'attacks the execution of a sentence' and 'is not an additional, alternative, or supplemental remedy' to a § 2255 proceeding." *Fuller v. United States*, No. 97-1277, 1998 WL 3467, at \*\*1 (10th Cir. Jan.

6, 1998) (citations omitted). “The purpose of section 2255 is to provide a method of determining the validity of a judgment by the court which imposed the sentence, rather than by the court in the district where the prisoner is confined.” *Johnson v. Taylor*, 347 F.2d 365, 367 (10th Cir. 1965). Petitioner’s petition will be dismissed without prejudice to his right to pursue his claims in an appropriate forum.

IT IS THEREFORE ORDERED that Petitioner’s motion for leave to proceed in forma pauperis (Doc. #2) is GRANTED;

IT IS FURTHER ORDERED that Petitioner’s “petition to vacate sentence pursuant to 28 U.S.C. § 2241” is DENIED without prejudice; and pursuant to Fed.R.Civ.P. 58(a)(2)(A)(iii), *United States v. Sam*, No. 02-2307, 2003 WL 21702490, at \*1 (10th Cir. July 23, 2003), a form of judgment will be entered in accordance with this opinion.



UNITED STATES DISTRICT JUDGE